SANJIV

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2317 OF 2006

Natesha Securities ... Petitioner

Vs.

The State of Maharashtra & Anr. ...Respondents

Mr. Shirish Gupte with Sharmila Kaushik for the petitioner.

Mr. S. J. Raikar for respondent 2.

Ms. M. H. Mhatre, APP for the State.

CORAM : SMT. RANJANA DESAI, J.

DATED : 21ST DECEMBER, 2006.

P.C. :-

1. The petitioner is the accused in Criminal Case No. 440/1997 pending on the file of Judicial Magistrate, First Class, Pune. Respondent 2 is the complainant. It is the case of the complainant that the petitioner is dealing in Shares and Debentures etc. The petitioner through its proprietor Shri Shirish Weling being in need of financial assistance requested the complainant to give loan of Rs.

10,34,000/- to it. The complainant advanced loan of Rs. 10,34,000/- by Demand Draft No. 378174 of Janata Sahakari Bank Ltd., Pune dated 27/02/1996. Despite demands made by the complainant, petitioner did not return the said amount. Ultimately, the petitioner issued two cheques both drawn on HDFC Bank Ltd., Khar Branch, Mumbai. When presented for encashment, the said cheques were returned with endorsement "Account closed". It is on the basis of these facts that the instant complaint came to be filed.

2. An application was preferred by the petitioner on 27/09/2006 praying that witness summons be issued to Mr. D. V. Pandit, Assistant State Examiner of Documents, so that he could be examined as a defence witness on behalf of the petitioner. To this application was annexed a list of witnesses. At serial 2 one finds following words "Concerned department officer of Income Tax". Apart from himself the petitioner has mentioned 4 other persons in the list of witnesses. However, there is no reference to these persons in the complaint. The said application was rejected by the learned Magistrate. After observing that the case was sufficiently delayed, the learned Magistrate permitted the petitioner to examine himself subject

to the condition that he will be present regularly. This order was challenged by the petitioner by filing revision application in the Sessions Court. That revision application came to be rejected and hence this petition.

3. I have heard Mr. Gupte, learned counsel appearing for the petitioner. Mr. Gupte contended that the courts below have erred in rejecting the petitioner's application. He submitted that it is the case of the petitioner that the amount covered by the cheque was given by the complainant for investment and not as by way of loan. He submitted that there is a note dated 08/08/1996 addressed by the complainant to the petitioner stating that she was sending a draft of Rs.2,40,000/- for investment. He submitted that this chit is of utmost importance to the petitioner's case. He pointed out that therefore, on the request of petitioner this note was sent to the handwriting expert. However, though the chit was sent to the handwriting expert on 2 occasions the handwriting expert could not give any opinion. Mr. Gupte submitted that, therefore it is necessary for the petitioner to cross-examine the handwriting expert and hence a prayer was made by the petitioner to issue witness summons to the handwriting expert.

Mr. Gupte submitted that it is also necessary to summon the Officer of Income Tax department because since this amount was advanced for investment, an entry to that effect would be found in the income tax return filed by the complainant. Mr. Gupte submitted that both these witnesses are important to the petitioner as his defence rests on them. He submitted that the petitioner is not pressing his demand for summons to rest of the witnesses. In the circumstances, Mr. Gupte urged that the impugned order may be set aside and the learned Magistrate be directed to issue witness summons to the two witnesses who are vital to the petitioners case.

4. Mr. Raikar, learned counsel appearing for respondent 2, on the other hand submitted that it is not necessary to summon these witnesses. He submitted that the handwriting expert having expressed that for want of adequate specimen and natural signatures of contemporary period, for scientific examination, no opinion can be given as regards the chit dated 08/08/1996, it is not necessary to call him. Mr. Raikar, submitted that this is petitioner's tactic to delay the case. This court should therefore reject the petition.

5. I have considered the rival submissions advanced by both

sides. The grievance made by Mr. Raikar that the petitioner has delayed the trial is genuine. The conduct of the petitioner establishes this. The learned Magistrate has also stated so. It is pertinent to note that the complaint is of the year 1997. On 01/08/1998 the petitioner challenged the constitutional validity of certain provisions of the Negotiable Insturments Act. This petition was rejected on 17/08/1999. It appears that the petitioner again approached this Court. Stay order was passed by this Court on 22/05/2000. Writ petition filed by the petitioner was dismissed and the stay order was vacated on 12/06/2000. The hearing was started on 27/09/2000. Thereafter the petitioner moved an application praying that the said chit be sent to handwriting expert for his opinion. The said application was filed in the year 2000. The handwriting expert's opinion was received on 24/04/2002. On 31/03/2003 the statement of the accused under Section 313 of Code of Criminal Procedure -1973 was recorded. On 13/06/2003, the petitioner filed another application for sending the said chit again to the handwriting expert. The said chit was again sent to the handwriting expert. On 01/07/2005, the report of the handwriting expert was received. It was similar to the

previous report. On 20/09/2005, the petitioner moved another application. That application was rejected on 14/10/2005. Being aggrieved by this, the petitioner filed a writ petition, which was dismissed in default on 28/11/2005. Then the matter was kept for argument. The petitioner sought adjournment. He wanted to file an appeal against the order passed by the Magistrate. Thereafter he filed an application to examine the defence witness. He filed a writ petition which was dismissed on 29/06/2006. He then moved an application that he wants to challenge the order in the Supreme Court. Thereafter, he continuously moved adjournment applications on 02/08/2006, 16/08/2006 and 28/08/2006. On 29/09/2006, the instant application was filed by him.

6. I have already noted that in this application, the petitioner has restricted his case to summons to be issued to the handwriting expert and though names of other witnesses have been cited, there is no reference to them in the application. While rejecting the application on 12/10/2006 the learned Magistrate permitted the petitioner to examine himself. He made it clear that the matter should be conducted on day to day basis from 11.00 to 11.30. He directed

that the petitioner should file defence affidavit for examination-in-chief on that day and complainant was directed to complete his cross-examination on the next day. The petitioner did not take steps pursuant to this order but challenged the said order in the Sessions Court. This conduct, in my opinion, suggests that the petitioner watns to dely the trial. It is distressing to note that case of the year 1997 is not disposed of till today. Statement of the accused under Section 313 of the Code was recorded on 31/03/2003. Till date he has not examined himself though permitted. On 20/10/2006 in the interest of justice, statement made by the counsel for the petitioner was recorded. The learned counsel for the petitioner stated that the petitioner undertakes to produce defence witnesses before the trial court without insisting on issuance of witness summons. In view of this statement the matter was adjourned. The petitioner could not produce the witnesses. Inability to produce the witnesses, is expressed in the court. The matter is thus being dragged on.

7. In my opinion, trial is sufficiently delayed and must be concluded at the earliest now. Mr. Gupte on instructions from his client, who is present in the court states that the petitioner shall not

seek any adjournments. That statement is recorded and accepted by me. Since, it is made very clear that except the handwriting expert and the officer of the income tax department no other witnesses need to be summoned and since the learned Magistrate had already sent the chit to the handwriting expert. I direct him to issue witness summons to handwriting expert Mr. Pandit and any officer from the Income Tax department. Their evidence must be concluded expeditiously. The case should be disposed of by 30/01/2007. There should be no further adjournments. Petition is disposed of.

(SMT. RANJANA DESAI, J.)